IN THE

Supreme Court of the United States

No. 173 **173**

UNITED STATES AND INTERSTATE COMMERCE COMMISSION,

Appellants,

v.

UNITED STATES SMELTING, REFINING & MINING COMPANY, DENVER & RIO GRANDE WESTERN RAILROAD COMPANY, AND UNION PACIFIC RAILROAD COMPANY,

Appellees,

AND

UNITED STATES AND INTERSTATE COMMERCE COMMISSION,

Appellants,

v.

DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, UNION PACIFIC RAILROAD COMPANY AND AMERICAN SMELTING AND REFINING COMPANY,

Appellees,

CONSOLIDATED CAUSES

JOINT PETITION OF THE APPELLEES, THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO AND PUBLIC SERVICE COMMISSION OF UTAH, FOR REHEARING AND REARGUMENT.

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The Public Utilities Commission of the State of Colorado and the Public Service Commission of Utah hereby respectfully petition the Court for rehearing and reargument of the judgment of reversal of this Court of March 27, 1950, in the above proceedings.

While said State Commissions adopt the grounds set forth in the joint petition for rehearing and reargument filed with this Court by the appellee carriers and industries, they hereby assign in addition the following independent grounds for such rehearing and reargument.

I.

Said State Commissions most respectfully, but earnestly, protest against the apparent failure of this Court, as disclosed by its opinion upon which its judgment of reversal was based, to give any consideration whatever to the grounds set forth in the briefs filed by such State Commissions as appellees in these proceedings, showing:

(a) that the orders of the Interstate Commerce Commission constitute unlawful and arbitrary attempts to usurp the jurisdiction of such State Commissions over the regulation of purely intrastate traffic;

(b) that in making such orders the Commission has arbitrarily disregarded the serious adverse economic effect such orders would have on the mining industry of the States of Colorado and Utah; and

(c) that the segregation of line-haul and terminal switching charges in connection with rates based on actual valuation is not only impractical, but would *pro tanto* serve to defeat the purpose of such rate basis.

II.

As set forth at page 4 of the brief of the Public Utilities Commission of the State of Colorado, and likewise at page 4 of the brief of the Public Service Commission of Utah, the terminal switching particularly in issue in these proceedings are rendered almost wholly in connection with purely intrastate traffic, over which intrastate traffic the jurisdiction of said State Commissions is exclusive, in the absence of proceedings instituted and shown warranted under Section 13 of the Interstate Commerce Act.

As shown at page 4 of the brief of the Colorado Commission, 96% of all inbound shipments to the smelter of the appellee industry, American Smelting & Refining Company at Leadville, Colorado, have been of purely intrastate traffic.

As similarly shown at page 4 of the brief of the Utah Commission, approximately 90% of all inbound shipments to the Midvale smelter of the appellee industry, United States Smelting, Refining and Mining Company, were of purely intrastate traffic. The record shows, moreover (R. 1370-1372, Exh. 21), that over 93% of all inbound shipments to the Garfield smelter of the appellee industry, American Smelting & Refining Company, likewise were of purely intrastate traffic.

As well stated and demonstrated at pages 9 and 10 of the brief of the Colorado Mining Association,* the orders of the Interstate Commerce Commission, therefore, either are intended unlawfully to affect intrastate traffic or such orders have no substantial purpose.

III.

As shown at page 3 of the brief of the Colorado Commission, the orders of the Interstate Commerce Commission will have seriously adverse economic effects on the mining industry of Colorado.** This is also shown as to the mining industry of Utah in the brief of the appellee Utah Mining Association, pages 3 to 6, to which the brief of the Utah Commission makes reference.

IV.

As shown at pages 6 and 7 of the brief of the Utah Commission, a segregation of line-haul and terminal switching charges in connection with rates on non-ferrous ores and concentrates based on actual valuation is not only impractical but would, *pro tanto*, destroy the actual valuation basis of such rates.

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*It will be noted that as stated at p. 2 of the brief of the Colorado Commission, that brief, in order to avoid burdening this Court with repetition, adopts the brief of the Colorado Mining Association.

**Further in this connection, see showing in this respect made at pp. 4-9 of the brief of the Colorado Mining Association.

V.

The appellee State Commissions have been parties to the proceedings before the Interstate Commerce Commission since their inception, but despite their best efforts, the Commission has arbitrarily declined to give any consideration whatever to the foregoing matters. Such State Commissions recognize that there has, of course, been no such intentional disregard of these matters by this Court, but believe that they may have been overlooked due to the fact that the State Commissions waived participation in the oral argument before this Court in order to afford the appellee carriers and industry more adequate opportunity to present the legal and factual issues peculiarly affecting such appellees. Such State Commissions, therefore, most easnestly hope that this Court will grant rehearing and reargument particularly to permit opportunity for the clarification of the scope and effect of the Commission's orders without further litigation.

Respectfully submitted,

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

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